UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,	}	
Plaintiff,	}	**Civil No. 2:07cv169**
v.	}	
JEROME REED,	}	
Defendant.	}	

JEROME REED,	}	
Plaintiff,	}	**Civil No. 2:07cv403**
v.	}	
JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,	}	
Defendant.	}	

Memorandum in Support of Motion To Consolidate

NOW COMES the Plaintiff, JTH Tax, Inc. d/b/a Liberty Tax Service [“Liberty”], by counsel, and for its Memorandum in Support of Motion to Consolidate, states as follows:

I. FACTS

The defendant, Jerome Reed (“Reed”) previously owned and operated five Liberty Tax Service franchises which gave to Reed the right to operate Liberty Tax Service offices using Liberty’s proprietary trademarks and methods in specified territories in New Jersey.

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Pursuant to Franchise Agreements, Reed eventually operated one Liberty Tax Service office in the Territory identified by Liberty as NJ163. This office was located at 6 Market Street, Clifton, New Jersey 07012. *See*, Via Decl. and Compl., Ex. 1, which is a true and correct copy of the franchise agreement for this territory. The other agreements are identical except for the territory description. Reed also purchased four other Liberty territories in which he never opened offices, pursuant to identical franchise agreements, but for different territories.

On or about April 4, 2006, Liberty sent a Notice to Cure to Reed informing him that he was in violation of his Franchise Agreements in that he owed to Liberty monies which were more than 30 days past due. (Via Decl., Ex. 6.) Reed failed to cure this deficiency. (Gundran Decl and Via Decl.) As such, on or about June 27, 2006, Liberty sent a letter to Reed informing him that his franchise agreement was terminated based upon his failure to pay amounts owing to Liberty. (Via Decl., Ex. 7.)

Upon termination of Reed's Franchise Agreement with Liberty, Reed became subject to certain post-termination obligations to Liberty. (Compl., Ex. 1, ¶¶ 9-10.) In addition to in-term breaches previously set forth in Liberty's Complaint, Reed also breached his post-termination obligations by filing a lawsuit against Liberty in New Jersey state court in breach of Section 15 of his franchise agreement, which caused Liberty to incur $17,173.14 in legal fees which Liberty would not have incurred if Reed had honored Section 15.b. of his franchise agreements and sued in Virginia where Liberty uses salaried in-house counsel to defend cases of this nature. (Sager Decl.) Reed also failed to pay to Liberty all amounts owing to Liberty (Gundran Decl.)

In Reed's New Jersey State Court action he alleged various contractual breaches of the same franchise agreements at issue in Liberty's suit filed against Lee in this Court. In particular, Reed asserted that Liberty breached the contract by failing to act in good faith, that

Liberty ended Reed's license without proper notice, and that the franchise agreements were unconscionable.

On or about April 17, 2007, the case was removed to the United States District Court, District of New Jersey. On May 7, 2007, Liberty filed a Motion to Transfer the case to the United States District Court, Eastern District of Virginia pursuant to a forum selection clause in each of Reed's Franchise Agreements. On August 21, 2007, the United States District Court of New Jersey granted Liberty's Motion to Transfer. This case is now also currently pending in this Court.

Further detailed facts and exhibits are contained in the Complaint and Declarations of Bonnie Via, David Sager and Jan Gundran which are incorporated herein by reference.

II. ARGUMENT

Rule 42(a) of the Federal Rules of Civil Procedure provides that:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The logic of Rule 42(a) is to give the court broad discretion in deciding how cases on its docket are to be tried and so that the business of the court may be dispatched with expedition and economy while providing justice to the parties involved. Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971). Courts have broad discretion to consolidate cases under Rule 42(a). *Norfolk Dredging Co. v. Phelps,* 2006 U.S. Dist. LEXIS 80558 (E.D. Va. 2006). "Consolidation clearly satisfies Rule 42(a) when the claims are brought against the same party, rely on the same witnesses, allege the same misconduct, and are answered with the same defenses." *Id.* at 6.

In both cases, for instance, the operational issues surrounding Reed's operation as a franchisee will be relevant. Reed contends in his Second Count that Liberty breached the franchise agreements by failing to act in good faith. Liberty contends that Reed breached the very same franchise agreements during his time as a Liberty franchisee. Not only are the issues at hand very similar but the same witnesses will likely be needed. Bonnie Via, for instance, will likely testify for Liberty as to the in-term breaches by Reed of his franchise agreements. Similarly, Reed will likely also require Ms. Via's testimony as to the franchise agreement breaches he asserts.

These actions are substantially related for the purposes of consolidation. Both actions relate to duties in the very same franchise agreements and are between the same parties. Both actions will involve the same witnesses and evidence. And both parties will raise the same defenses.

III. CONCLUSION

In the interests of judicial economy and efficiency, the Court should grant Liberty's motion to consolidate *JTH Tax, Inc. d/b/a Liberty Tax Service v. Jerome Reed,* (2:07cv169) with *Jerome Reed v. JTH Tax, Inc. and John Does, I-V, XYZ Corp. I-V,* (2:07cv403).

JTH Tax, Inc. d/b/a Liberty Tax Service

By: ________________/s/________________________

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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